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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,441	04/09/2004	David A. Brock	38484-076 (BYRK-23)	1340

23630 7590 08/23/2005

MCDERMOTT WILL & EMERY LLP  
ATTN: INTELLECTUAL PROPERTY DEPARTMENT DOCKETING  
28 STATE STREET  
BOSTON, MA 02109

EXAMINER

LEVKOVICH, NATALIA A

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/821,441

Applicant(s)

BROCK ET AL.

Examiner

Natalia Levkovich

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission dated 07/13/2005 has been entered.

### ***Response to Amendment***

2. Applicant's amendments to claim 1 and remarks dated 07/13/2005 have been acknowledged by the Examiner and entered. Claims 1-33 are pending in the instant application for consideration.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-4, 7-15, 21-23 and 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaeef (USP 6,239,445) in view of Chow (PGPUB 20020015667) and in view of Maisch (USP 3,998,145).

See the appropriate paragraphs of the 04/13/2005 Office Action.

#### ***Allowable Subject Matter***

6. Claims 5-6, 16-20, 24-29 are allowed over the cited prior art.

#### ***Reasons For Allowable Subject Matter***

7. The prior art does not teach, or fairly suggest a tray assembly having an insert with locating members being a boss and an indent and a reagent cassette having the corresponding locating members as recited in claims 5-6.

The prior art does not teach, or fairly suggest a support tray and an insert having elongated guides comprising grooves and defining sinks in the elongated guides, as well as a tray having a compartment for receiving the insert while the compartment

includes stops to improve the engagement between the insert and the tray as recited in claims 16-20 and 27-29.

The prior art does not teach, or fairly suggest a tray assembly including a cam surface for opening a door of the liquid sample as recited in claims 24-26.

### ***Response to Arguments***

8. Applicant's arguments filed on 02/07/2005 have been fully considered but they are not persuasive.

Applicant argues that the Shaeef reference does not suggest modifying the insert to provide two different receiving surfaces for two different liquid specimen carriers; that the adaptor of the Chow reference does not have the first surface adapted to receive a first type of carrier and the second surface adapted to receive a second type of carrier; and that the Maisch reference does not relate to analogues art.

The Examiner disagrees. As it was admitted by Applicant in Remarks dated February 7, 2005, the Chow reference discloses a tray assembly for chemical analysis similar to the tray assembly of Shaeef, both having a base and an adapter for receiving a liquid sample. The adapter has one side adapted to receive a sample. The opposite side mates the base. Chow teaches a set of such 'one-sided' adapters to accommodate different types of sample carriers. In case of a similar apparatus designed to receive two different sample carriers, it would be obvious to one of ordinary skill in the art at the time the invention was made to employ one 'two-sided' adapter, instead of two 'one-sided', in order to simplify sample handling and to make the process less

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time consuming .


Although the Maisch reference relates to food processing, it clearly supports the concept of combining two working surfaces in one member of an apparatus, rather than employing two 'one -sided ' members.

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalia Levkovich whose telephone number is 571-272-2462. The examiner can normally be reached on Mon-Fri, 8 a.m.-4p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700